

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

MS-4088

GG-2087

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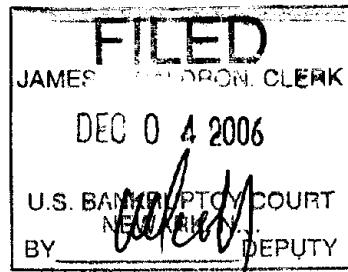
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Proposed Attorneys for Marcal Paper Mills,
Inc., Debtor-in-Possession

In re:

MARCAL PAPER MILLS, INC.,

Debtor-in-Possession.



Case Nos. 06-21886

Judge: Morris Stern

Chapter 11

Hearing Date: December 4, 2006 at 3:00 p.m.

**INTERIM ORDER AUTHORIZING THE DEBTOR'S USE OF CASH COLLATERAL
PURSUANT TO 11 U.S.C. § 363(c)(2) AND FED.R.BANKR.P. 4001 AND SCHEDULING
FINAL HEARING DATE**

The relief set forth on the following pages, numbered two (2) through nine (9), is hereby
ORDERED.

12/4/06

M. A. D.

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THIS MATTER having been opened to the Court by Marcal Paper Mills, Inc., the within debtor and debtor-in-possession (the "Debtor"), by and through its proposed attorneys, Cole, Schotz, Meisel, Forman & Leonard, P.A., for authority to use the cash collateral of the Lenders (as defined in the Verified Application submitted in support of the Debtor's motion)¹ on an interim basis pursuant to Federal Rule of Bankruptcy Procedure 4001(b) and 11 U.S.C. §363(c)(2) (the "Motion"); and it appearing that notice of the Motion, together with notice of the preliminary hearing thereon, has been given and served by the Debtor on: (1) the Office of the United States Trustee, (2) the Debtor's alleged secured creditors, and (3) the twenty (20) largest unsecured creditors of the Debtor, as reflected in the lists submitted pursuant to Fed. R. Bankr. P. 1007(d); and the Court having considered the Debtor's Verified Application in Support of Interim Use of Cash Collateral (the "Application"); and after due deliberation and with good and sufficient cause appearing for the entry of the within order, it is hereby found:

A. **Notice and Hearing.** Notice of the Motion and of the preliminary hearing on the Debtor's use of cash collateral has been served in accordance with Section 102(1) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001(b), which notice is appropriate in the particular circumstances and sufficient for all purposes under the Bankruptcy

¹ Capitalized terms not otherwise defined in this Order shall have the meaning ascribed in the Verified Application.

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Code and the applicable Federal and Local Rules of Bankruptcy Procedure with respect to the relief requested.

B. **Chapter 11 Filed.** The Debtor filed its petition under Chapter 11 of the Bankruptcy Code on November 30, 2006 (the "Petition Date"), and is presently operating as debtor-in-possession pursuant to 11 U.S.C. §§1107 and 1108.

C. **Pre-Petition Debt.** The Lenders assert claims in the principal amount of approximately \$118,000,000.00 (the "Pre-Petition Debt") as of the Petition Date, secured by liens on substantially all the assets of the Debtor. The Primary Secured Lenders assert approximately \$68 million in principal amount of claims. The Subordinated Secured Lenders assert approximately \$50 million in principal amount of claims. The Lenders assert claims for interest, fees and expenses and all other amounts due under their respective credit documents.

D. **Pre-Petition Collateral.** It appears that the Lenders may have, subject to making a *prima facie* showing, properly perfected liens on certain of the assets of the Debtor at the commencement of this case, including the Debtor's accounts receivable, inventory and other collateral which is or may result in cash collateral.

E. **Cash Collateral.** "Cash Collateral" as defined by 11 U.S.C. §363(a) includes post-petition proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in Section

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552(b) and as the term "proceeds" is described in subject to a security interest as provided in 11 U.S.C. §522(b) and as the term "proceeds" is described in UCC Section 9-306.

F. **Necessity and Best Interest.** The Debtor does not have sufficient unencumbered cash or other assets with which to continue to operate its business in Chapter 11. The Debtor requires immediate authority to use cash collateral as defined herein to continue its business operations without interruption toward the objective of formulating an effective plan of reorganization. On an interim basis the Debtor's use of cash collateral to the extent and on the terms and conditions set forth herein is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. The amount of the Lenders' cash collateral authorized to be used pending a final hearing or entry of a final Order is not to exceed the amounts reflected under the heading "Operating Cash Disbursements" and "Restructuring Fee" in the Debtor's 13 Week Summary Cash Flow attached to the Application as Exhibit A, for the time period from the Petition Date through and including December 22, 2006 (the "Cash Collateral Budget").

G. **Purposes.** The Debtor must be authorized to use the cash collateral of the Lenders to meet its ordinary cash needs (and for such other purposes as may be specifically approved in writing by the Lenders) for the payment of actual expenses of the Debtor necessary to: (a) maintain and preserve its assets, and (b) continue operation of its business, including payroll and payroll taxes, and insurance expenses as reflected in the Cash Collateral Budget through the date of the Final Hearing.

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AND the Court having determined there is a reasonable likelihood that the Debtor will prevail upon the merits at the final hearing of the motion as required by 11 U.S.C. §363(c)(3); and for good cause shown,

IT IS ORDERED on an interim basis as follows:

As defined in 11 U.S.C. § 363(a) ("Cash Collateral")

1. **Use of-Cash Collateral.** The Debtor is authorized to use the cash collateral of the Lenders in accordance with the Cash Collateral Budget up to the aggregate amount of

\$ 15,259,000.00 through and including *December 22* 2006, for the following purposes:

beginning on November 20, 2006

- (a) maintenance and preservation of its assets; and
- (b) the continued operation of its business, including but not limited to

payroll, payroll taxes, employee expenses, and insurance costs.

2. **Adequate Protection.** As adequate protection for use of cash collateral, the Lenders are GRANTED:

- (a) A replacement perfected security interest under 11 U.S.C. §361(2): (i) *as defined in 11 U.S.C. § 363(a)* only to the extent the *Cash Collateral* of the Lenders is used by the Debtor and such use results in a diminution of their interest in *Cash Collateral* such that the Lenders are placed in an undersecured position; (ii) only to the extent such pre-petition liens are valid; and (iii) with the same priority in the post-petition collateral and proceeds thereof of the Debtor that each of the Lenders held in the pre-petition collateral, and (iii) a priority claim pursuant to 11 U.S.C. §

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507(b)] limited to the extent of the diminution of the Lenders' interest in cash collateral such that
the Lenders are placed in an undersecured position.

(b) The replacement lien and security interest granted herein is automatically deemed perfected upon entry of this Order without the necessity of the Lenders taking possession of its collateral or filing financing statements, mortgages or other documents.

(c) Nothing herein shall constitute a finding that the Lenders have a valid lien on the cash collateral or any of the other assets of the Debtor. The Debtor reserves all its rights concerning the validity, extent, and priority of any of the alleged liens of the Lenders. In the event the Lenders' alleged lien on ~~Cash~~ Collateral is determined to be invalid, then the adequate protection provided hereunder to the Lenders shall be null and void.

(d) During the term of this Interim Order, the Debtors shall provide the Lenders, by the close of the business of the following day, daily cash flow reports showing cash receipts and disbursements made by the Debtor. Within two business days of the week ended, weekly cash flow reports shall also be provided to the Lenders and the United States Trustee, by the close of business of the following day. Upon appointment of an official committee of unsecured creditors (“Committee”), the Debtor shall provide the Committee or its Chairman, until the Committee selects counsel and financial advisors, with the same daily cash flow reports delivered to the Lenders. The Debtor shall also provide by the 20th day of each month, periodic

accountings to the Lenders setting forth the cash receipts and disbursements made by the Debtor

* In addition, **Cash Collateral** ^{on a live by live basis on} The Debtor shall circulate a weekly actual to Budget comparison within each 39517/0001-2326621v4 ^{seventy-two hours of the close of week in question.} ~~budgetary item~~

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during the preceding month under this Order. In addition, the Debtor shall provide the Lenders with copies of their monthly United States Trustee operating reports. Upon appointment of an official committee of unsecured creditors ("Committee"), the Debtor shall submit a copy of the monthly operating reports to counsel to the Committee (if counsel has been appointed), and until counsel is retained, to the Chairman of said Committee. In addition, during the term of this Interim Order, upon reasonable notice by the Lenders, the Debtors shall permit the Lenders and any of their financial advisors reasonable and free access to the Debtor's financial advisors and, upon agreement with the Company, access to the Debtor's operating, management and financial personnel, to review the Debtor's cash flows, operating and financial performance, the Debtor's budgets, forecasts, projections and documents related thereto, including, without limitation, to review matters related to the existence, condition, location and amount of the Lenders' collateral.

(e) *No assets shall be sold outside ordinary course of business without order of the Court.*
3. **Creditor's Rights of Inspection and Audit.** Upon reasonable notice by the Lenders, the Debtor shall permit the Lenders and any of their agents reasonable and free access to the Debtor's records and place of business during normal business hours to verify the existence, condition and location of collateral in which the Lenders hold a security interest and to audit the Debtor's cash receipts and disbursements.

4. **Interlocutory Order and No Modification of Creditor's Adequate Protection.**

This is an interlocutory order. Nothing contained herein shall be deemed or construed to: (a)

limit the Lenders to the relief granted herein; (b) bar the Lenders from seeking other and further

④ Any dispute relating to cooperation with the Lenders' consultants, access to books and records or Debtor's personnel or information

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or failure to provide required financial reports or information, may be addressed ~~not~~ through a telephonic conference with the Court.

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relief (including without limitation relief from the terms of this Order) for cause shown on appropriate notice from the Debtor and other parties-in-interest entitled to notice of same; or (c) require the Lenders to make any loans or advances to the Debtor. The Order may be modified for cause shown by the Debtor, the Lenders or any other party-in-interest on due notice. No such modification, however, shall deprive the Lenders of their interest in the property (pre-petition and post-petition) of the Debtor to the extent valid.

5. **Lockbox Accounts.** The Debtor maintains a lockbox account for the benefit of the Primary Lenders. In order to avoid any delay in the Debtor's access to cash collateral and notwithstanding anything to the contrary in any lockbox account agreement to which Wachovia is a party, Wachovia is hereby precluded from sending any Debtor funds to the Primary Lenders. Rather, Wachovia shall transfer all funds collected in the lockbox accounts, as such funds become available, to the operating accounts at Bank of America bearing account number 381000337489 maintained by the Debtor to which such funds belong.

6. **Default Hearing.** In the event the Debtor defaults under or violates this Order, the Lenders may request a hearing within ten (10) days (or if immediate and irreparable injury, loss or damage may occur, an emergency hearing within forty-eight (48) hours). For purposes of this Order, however, the Debtor shall not be deemed to be in default for any deviation from the **Seven and a half (7.5%)** Cash Collateral Budget provided such deviation is not more than **ten (10%)** percent of the

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budgeted disbursements, either on a cumulative basis or with regard to any specific budgeted line item.

7. Nothing herein shall prejudice Lenders' rights to seek additional adequate protection retroactive to the Petition Date.
FINAL HEARING

IT IS FURTHER ORDERED, AND NOTICE IS HEREBY GIVEN that any creditor or other interested party having any objection to the Debtor's use of the Lenders' cash collateral shall file with the Clerk of this Court and serve upon counsel for the Debtor, counsel to the Lenders and the Office of the United States Trustee by or before 1:00 p.m. on the 20th day of Dec., 2006, a written objection and shall appear to advocate said objection at a Final Hearing to be held at 10:00a m. on the 2nd day of December, 2006 in Courtroom 3A of the United States Bankruptcy Court, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Newark, New Jersey. If no objections are filed and advocated at such hearing, then this Order shall continue in full force and effect and shall be deemed a Final Order without further notice or hearing in accordance with Fed. R. Bankr. P. 4001(d)(3).

NOTICE

IT IS FURTHER ORDERED that the Debtor serves a copy of this Order and Notice by first class mail, within 3 business days from the date hereof, on: (a) the Office of the United States Trustee; (b) the Lenders, all other known secured creditors and their respective counsel, if known; and (c) counsel to any Committee appointed under 11 U.S.C. §1102 if one has been appointed and, if not, to each of the Debtor's twenty (20) largest unsecured creditors set

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forth on the lists filed pursuant to Fed. R. Bankr. P. 1007(d). The Debtor shall thereafter file
with the Clerk a Certificate of Service of said mailing.